



# NATIONAL CONGRESS OF AMERICAN INDIANS

## The National Congress of American Indians Resolution #DEN-18-059

### **TITLE: Calling on the Federal Government to Uphold Existing Law Regarding the Political Status of Tribal Nations**

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#### NCAI HEADQUARTERS

1516 P Street, N.W.  
Washington, DC 20005  
202.466.7767  
202.466.7797 fax  
[www.ncai.org](http://www.ncai.org)

**WHEREAS**, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of tribal nations, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of Indian people, do hereby establish and submit the following resolution; and

**WHEREAS**, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

**WHEREAS**, tribal nations are sovereign nations that predate the founding of the United States; and

**WHEREAS**, the U.S. Constitution recognizes that tribal nations have a unique status because of their sovereignty and relationship with the United States; and

**WHEREAS**, the United States has trust and treaty obligations to tribal nations; and

**WHEREAS**, the U.S. Constitution contains provisions specifically directed at tribal nations that give the United States the tools necessary to fulfill its trust and treaty obligations; and

**WHEREAS**, in 1974, the Supreme Court in *Morton v. Mancari* affirmed that the United States can lawfully treat tribal nations differently than other groups without running afoul of the U.S. Constitution's equal protection clause because such treatment is not based upon a racial classification, but rather is based upon the recognition that tribal nations have a unique political relationship with the United States; and

**WHEREAS**, since *Morton v. Mancari*, courts have continuously upheld the principle that actions in furtherance of the federal trust responsibility do not violate the U.S. Constitution under the equal protection clause; and

**WHEREAS**, since federal agencies may act to aid in carrying out the United States' trust responsibility, courts have applied the equal protection principles affirmed in *Morton v. Mancari* to uphold federal actions that further the trust responsibility, and they have not required federal agencies to act under a specific statute targeted at tribal nations; and

**WHEREAS**, similarly, since states may act to aid in carrying out the United States' trust responsibility, courts have applied the equal protection principles affirmed in *Morton v. Mancari* to uphold as constitutional states' acts directed at tribal nations in implementing federally funded programs; and

**WHEREAS**, since statutes that prohibit race-based discrimination, such as the Civil Rights Act, incorporate equal protection jurisprudence regarding suspect classifications, actions in furtherance of the federal trust responsibility do not qualify as statutorily prohibited race-based discrimination; and

**WHEREAS**, recent statements made by Administration officials and arguments pursued by certain parties in litigation demonstrate a profound misunderstanding of the federal trust responsibility and the government-to-government relationship between tribal nations and the United States, specifically as they relate to the equal protection clause under the U.S Constitution; and

**WHEREAS**, to find that such actions violate the U.S. Constitution's equal protection clause would be inconsistent with well-settled law and have drastic impacts on the United States' ability to carry out its trust responsibilities.

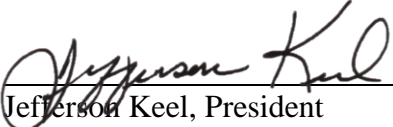
**NOW THEREFORE BE IT RESOLVED**, that the National Congress of American Indians (NCAI) strongly refutes the notion that any federal Indian program violates the equal protection clause of the U.S. Constitution and this is a fact upheld in federal statutes, regulations, policies, and case law; and

**BE IT FURTHER RESOLVED**, that NCAI calls upon the Administration and Congress to ensure all policy making, statements, and other federal actions reflect the indisputable constitutionality of actions aimed at carrying out the federal trust and treaty obligations owed to tribal nations; and

**BE IT FINALLY RESOLVED**, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

**CERTIFICATION**

The foregoing resolution was adopted by the General Assembly at the 2018 Annual Session of the National Congress of American Indians, held at the Hyatt Regency in Denver, Colorado October 21-26, 2018, with a quorum present.

  
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Jefferson Keel, President

**ATTEST:**

  
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Juana Majel Dixon, Recording Secretary